IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9384 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SURESHKUMAR G BHATT

Versus

SIDHPUR MUNICIPALITY

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Appearance:

1. Special Civil Application No. 9384 of 1993

MR PK JANI for Petitioner No. 1

MR JV BHAIRAVIA for Respondent No. 1-2 - Absent

MR HARESH J TRIVEDI for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 27/08/2003

ORAL JUDGEMENT

1. The petitioner challenges the resolution No.61, at Annexure "F" to the petition, passed by the

municipality appointing the respondent No.3 to the post of Shop-Inspector.

2. According to the petitioner, he was recruited as a clerk in the municipality from 8th January 1988 after selection by the staff selection committee. The petitioner was a graduate in arts and also a graduate in law. According to him, he was senior to the respondent No.3 in the cadre of clerks. On a vacancy arising in the post of Shop Inspector, the petitioner addressed a letter on 24th August 1993 to the Administrator of the municipality for being considered for the post in view of his qualifications. However thereafter, by the impugned resolution, the respondent No.3 was appointed as the Shop-Inspector in the pay-scale of Rs.1400 - 2600.

3. The contention of the petitioner is that the respondent No.3 was not qualified for the said appointment, because, he was not a graduate and had studied only upto First Year B.Com. Moreover, no prior sanction of the State Government was obtained before appointing the respondent No.3. According to the petitioner, the appointment of the respondent No.3, which was contrary to the rules, was a glaring instance of favouritism and the petitioner, who admittedly was senior to the respondent No.3, was ignored while issuing the impugned resolution.

3.1 The impugned resolution was stayed by an interim order made on 11th November 1993 and it appears that the respondent No.3 was not allowed to take over as Shop-Inspector, as stated by the learned counsel for the petitioner. It is also stated that the petitioner was thereafter promoted to a higher post.

4. Rule 20 of the Bombay Shops & Establishment Rules, 1962 lays down the qualifications of inspectors and, inter alia, provides that no person shall be appointed to be an Inspector under the Act unless he is a graduate of a recognized university, provided that, in special circumstances, a person, who is not a graduate, may be appointed to be an Inspector under the Act with the previous sanction of the government. In view of the said statutory provision, a non-graduate could not have been appointed as a Shop-Inspector in absence of any special circumstances and without previous sanction of the government. In the present case, it is not disputed that the respondent No.3 was not a graduate. In fact, the impugned resolution itself indicates that the respondent No.3 was not a graduate, and that he was allowed to obtain a graduation degree within two years

from the date of the resolution. The impugned resolution does not refer to any special reason for such a concession given to the respondent No.3, nor does it show that any prior sanction of the government was sought before issuing the appointment. The impugned resolution was, therefore, issued in violation of the provisions of Rule 20(1) of the Bombay Shops & Establishment Rules, 1962, and cannot be sustained and is hereby set aside. Rule is made absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

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